

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**The Samuel Law Firm**

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Attorneys for Defendant

FRANGIE ESPINAL, on behalf of herself  
and others similarly situated,

Plaintiffs,

- vs. -

CREATIVE MARKETING, INC.,

Defendant.

DOCKET NO. 1:23-cv-3857

**ANSWER**

Defendant CREATIVE MARKETING, INC. by and through its undersigned attorneys, answers  
the complaint of plaintiff Frangie Espinal as follows:

INTRODUCTION

1. Defendant admits that plaintiff brings the case on the described grounds, but denies that those grounds are accurate or that the case has any merit.
2. Defendant denies knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph.
3. Defendant denies knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph.
4. Defendant denies knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph.

5. Defendant admits that plaintiff brings the case on the described grounds, but denies that those grounds are accurate or that the case has any merit.
6. Denied
7. Denied
8. Defendant admits that plaintiff brings the case on the described grounds, but denies that those grounds are accurate or that the case has any merit.
9. Defendant admits that plaintiff brings the case on the described grounds, but denies that those grounds are accurate or that the case has any merit.

JURISDICTION AND VENUE

10. Admitted
11. Defendant admits that it conducts business in this district. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the remaining allegations of this paragraph, and therefore denies same.
12. Defendant admits that it conducts business in this district. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the remaining allegations of this paragraph, and therefore denies same.
13. Defendant admits that it conducts business in this district. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the remaining allegations of this paragraph, and therefore denies same.
14. Denied
15. Admitted

THE PARTIES

16. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.
17. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.
18. Admitted that defendant is a South Carolina corporation and has an office at the specified address, and that it operates a website. The remaining allegations of this paragraph are denied.
19. Admitted that defendant operates the Morpheus online retail store. The remaining allegations of this paragraph are denied.
20. Denied

NATURE OF ACTION

21. This paragraph contains no allegations about defendant that need be admitted or denied.
22. This paragraph contains no allegations about defendant that need be admitted or denied.
23. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.
24. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.
25. Admitted that an organization called the World Wide Web Consortium has published Web Content Accessibility Guidelines. Denied that these guidelines are universally followed, or that any law or regulation requires that such guidelines be followed.

26. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

STATEMENT OF FACTS

27. Admitted that defendant operates morpheus360.com. The remaining allegations are denied.

28. Denied

29. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

30. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

31. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

32. Denied

33. Denied

34. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

35. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

36. Denied

37. Denied

38. Denied

39. Denied

40. Denied

41. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

42. Admitted that an organization called the World Wide Web Consortium has published Web Content Accessibility Guidelines. Denied that these guidelines are universally followed, or that any law or regulation requires that such guidelines be followed. The remaining allegations in this paragraph are denied.

43. Denied

44. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

45. Denied

46. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

47. Denied

48. Denied

49. Admitted that defendant has invested substantial sums in its website. Denied that the website is not accessible to visually impaired customers, and therefore the remaining allegations of this paragraph are denied.

50. Denied

CLASS ACTION ALLEGATIONS

51. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

52. Defendant is without knowledge or information sufficient to form an opinion as to the

**Commented [NB1]:** Not super sure the correct way to respond to assertions of FRCP so basing my answers off of previously approved answers I have done. I can update if these do not apply.

truth of the allegations of this paragraph, and therefore denies same.

53. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

54. Denied

55. Denied

56. Denied

57. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

58. Denied

FIRST CAUSE OF ACTION  
(VIOLATIONS OF THE ADA, 42 U.S.C. § 12182 *et seq.*)

59. Defendant repeats, reiterates, and incorporates by reference its responses to all allegations in all preceding paragraphs 1-58 as if fully set forth herein

60. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

61. Denied

62. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

63. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

64. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

65. Denied

66. Denied

SECOND CAUSE OF ACTION  
(VIOLATIONS OF THE NYSHRL)

67. Defendant repeats, reiterates, and incorporates by reference its responses to all allegations in all preceding paragraphs 1-66 as if fully set forth herein

68. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

69. Denied.

70. Admitted that Defendant owns and operates a website. The remaining allegations are denied.

71. Denied

72. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

73. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

74. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations of this paragraph, and therefore denies same.

75. Denied

76. Denied

77. Denied

78. Denied

79. Denied

80. Denied

81. Denied

THIRD CAUSE OF ACTION  
VIOLATIONS OF THE NYCHRL

82. Defendant repeats, reiterates, and incorporates by reference its responses to all allegations in all preceding paragraphs 1-81 as if fully set forth herein

83. Admitted that this is generally an accurate summary of the law, subject to various statutory defenses and exceptions.

84. Denied

85. Denied

86. Denied

87. Denied

88. Denied

89. Denied

90. Denied

91. Denied

92. Denied

93. Denied

94. This paragraph contains no allegations about defendant that need be admitted or denied.

FOURTH CAUSE OF ACTION  
(DECLARATORY RELIEF)

95. Defendant repeats, reiterates, and incorporates by reference its responses to all allegations in all preceding paragraphs 1-94 as if fully set forth herein

96. Denied



97. Admitted this court has declaratory power but denies that the Plaintiff's claim has merit.

**AFFIRMATIVE DEFENSES**

1. Plaintiff lacks standing to bring these claims.
2. Plaintiff's allegations fail to state a claim upon which relief may be granted.
3. Plaintiff's claims are moot.
4. Plaintiff's claims are barred by the doctrine of unclean hands.
5. The court should not exercise supplemental jurisdiction over the non-federal claims in this suit.
6. The relief requested by plaintiff would not be readily achievable.
7. Plaintiff was not a bona fide customer of defendant.
8. Plaintiff is barred from recovery by reason of the fact that plaintiff has not sustained any damages whatsoever resulting from the actions or inactions of defendant.
9. Part or all of plaintiff's damages — if any — are the result of plaintiff's failure to mitigate damages.
10. Plaintiff is not entitled to statutory or punitive damages or fines.
11. Plaintiff is unable to satisfy the criteria for maintaining a class action. The potential class and subclasses are not numerous or ascertainable. The questions of law or fact are not common to the potential class or subclasses. The claims of the plaintiff are not typical of the claims of the potential class or subclasses. The interests of the potential class and subclasses will not be fairly and adequately represented.

Individual issues predominate over common issues.

12. In addition to the foregoing defenses, Defendant reserves the right to amend its Answer to raise any and all other additional affirmative and other defenses that may become evident during discovery and during any other proceeding in this action or pursue any available counterclaims against Plaintiff as those claims become known during this litigation.

Wherefore, defendant respectfully demands judgment against plaintiff dismissing all counts of the Complaint, and awarding attorneys' fees, costs and disbursements, and such other, further, and different relief as the Court may deem just and proper.

Dated: New York, NY

August 7, 2023

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